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MEMORANDUM

TO: PLANNING COMMISSION
FROM: KYRA CHAPMAN - PLANNER
SUBJECT: REQUEST FOR AN AMENDMENT TO CONDITIONAL USE PERMIT #C8-2004 TO ALLOW ADDITIONAL OUTDOOR SEATING FOR FOOD AND DRINKING SERVICES AND A VARIANCE #V1-2025 TO REQUEST A PERGOLA IN THE FRONT YARD OF 825 1ST ST SE, AS PROPOSED BY JPV PROPERTIES LLC.
DATE: JANUARY 7, 2025

Background

In December 2024, JPV Properties LLC purchased the property at 825 1st St SE, which was most recently where Smoke & Fire operated. The property owner intends to run a Class III restaurant at the location with a new outdoor patio on the north side of the existing building. To accommodate the new patio, JPV Properties LLC is requesting an amendment to conditional use permit C8-2004 for the 20' x 40' 7" patio, which would consist of a 12' x 40' 7" pergola, firepit, and two garage doors. The applicant is also requesting a variance to allow the pergola to be located in the front of their building. All the new amenities would help attract customers to the business.

The property has received conditional use permits in the past. In 2004, Extreme Investors of New Prague and Marv and Kim Deutch applied for a conditional use permit to construct a multi-tenant commercial facility (strip mall) and a restaurant on Lots 1 and 2 of East Town Plaza. In 2006, C8-2004 was reopened to request a southern building addition to provide more space at the restaurant for the bar area, freezer, pool tables/darts as well as enclosure the garbage/recycling area. The conditional use permit was reopened again in 2008 to include a screened porch on the east side of the property and to allow eating and drinking at their existing outdoor patios (south and east of the property). The applicant does not intend to utilize the existing south and east patio areas. The east patio is too narrow for customers or employees to easily pass tables, and the south patio has an undesirable view of the parking lot and refuse enclosure.

Legal Description

Lot 2, Block 1, East Town Plaza, LeSueur County, Minnesota

Street Location

JPV Properties LLC – Request to re-open CUP # C8-2004 - Additional outdoor seating for food and drinking services

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The street location of this property is 825 1st St SE New Prague, MN 56071.

Lot Size

The property, owned by JPV Properties LLC of New Prague, is on a parcel of land that consists of 1.5 Acres.

Zoning

Property 825 1st St SE is zoned B-2 Community Commercial District and within that district Restaurants Class I, II, and III (Fast Food, Sit Down Without Liquor/Entertainment, and Sit Down With Liquor/Entertainment) are a permitted use. Outdoor seating for food service business and drinking establishments are listed as a conditional use and must follow section 733 of the Zoning Ordinance. Any additional changes made to the existing conditional use permit requires an amendment.

Pergolas are considered accessory buildings and structures and thus must follow section 711 of the Zoning Ordinance. The Zoning Ordinance states that accessory structures cannot exceed the height of the principal building and that they must be placed to the rear of the principal building subject to building and fire zone regulations. The property does not have a rear yard. Instead, the property has two front yards (north and south) and two side yards (east and west). The applicant is requesting a variance to allow a 12' x 40' 7" pergola to be located 10' away from the north property line. In the site plan, the pergola appears to be slightly outside the fenced in area on three sides. The pergola may encroach into the 10' drainage and utility easement as long as the footings are outside the easement. Eaves are permitted encroachments.

In Business Districts, accessory structures (pergolas) must be a minimum of 6' away from the principal building, otherwise it is considered an integral part of the structure, and therefore, would have to meet district setbacks. The proposed pergola will be approximately 6' away from the principal building.

The gas-powered fire pit will be located in the middle of the outdoor patio area. Gas-powered fire pits do not have setback requirements.

The existing monument sign along Main St E/TH19 will be removed to make room for the patio area. If the property owner ever intends to construct a new monument sign, they will need to follow Zoning Ordinance 718 (3)(C).

Although the fenced-in patio is 10' away from the north property line, the patio is very far away from the street of TH19. There is a huge right-of-way between the actual highway to the fenced-in patio, lessening the visual impact. The fenced-in patio would be about 19' from the sidewalk in the MnDOT TH19 right-of-way or approximately 48' from the actual street. It's not like typical residential properties that are usually 12' away from the property line to the actual road.

Outdoor Seating Performance Standards

Restaurants and drinking establishments that provide outdoor seating must follow the performance standards found in section 733 of the Zoning Ordinance, which is as follows:

733 Outdoor Seating for Restaurants and Drinking Establishments

1. Restaurants, drinking establishments, and restaurants, may provide outdoor seating for their patrons with an approved Conditional Use Permit provided that the following requirements are met:
2. For all establishments:
 - A. The seating shall be located on private property and outside of any recorded easement areas and demonstrated on a site plan.
 - B. The seating shall consist of good quality patio or café type furniture that enhances the appearance of the business.
 - C. No beverages or food shall be served to persons outside of the designated outdoor seating area.
 - D. The seating area, if not slab on grade, shall be subject to applicable setback requirements.
 - E. The seating area shall have a permanent surface of concrete, asphalt, wood or other fabricated construction material.
 - F. The seating shall be located so as not to compromise safety. Seating shall not obstruct the entrance or any required exits or be located on landscaping or parking areas. If located on private sidewalks or walkways, it shall be located so as to leave a minimum of a four foot (4') wide passageway for pedestrians. Applicable building and fire codes for ingress and egress shall be met.
 - G. No additional parking is required for 30 outdoor seats or less. Any additional seating over 30 seats shall provide required parking based on one space per three seats.
 - H. The outdoor seating area shall be subordinate to the principal use and shall not exceed 40 percent of the square footage of the principal use building space.
 - I. Noises on the outdoor seating area shall be subject to City Code Section 92.18(S).
 - J. Lighting shall be permitted to the extent that it only illuminates the designed area. Lighting must otherwise meet the standards listed in Section 704 of this Ordinance for Glare.
 - K. The business owner or designated person shall inspect the premises on a daily basis including all adjacent streets, sidewalks, alleys, parking areas and sidewalks within 100 feet and remove all litter. Appropriate receptacles for rubbish, garbage, cigarette paraphernalia, etc. must be provided in close proximity to the outdoor seating area.
 - L. Additional conditions may be imposed by the City and listed on the approved conditional use permit including but not limited to hours of outdoor seating area use and additional screening or buffering to residential zoned or used areas.
 - M. No external music, live or recorded, shall be allowed after 10:00PM. It also shall not be audible from a distance of more than 50' from the edge of the defined patio area at any time.
3. For establishments with liquor licenses the following regulations apply in addition to those listed above:
 - A. The seating shall be located in a compact and contiguous location to the principal structure. No alcoholic beverages shall be served or consumed in an outdoor seating area unless the liquor license approved by the City specifies the compact and contiguous location.
 - B. The outdoor seating area shall be defined with the use of landscaping and permanent attractive fencing which is a minimum of four feet in height with at least 50 percent

- opacity that contains the tables and chairs for the use as demonstrated on a site plan. It shall also prohibit the free passage of any person or substance from the area.
- C. No alcoholic beverages shall be served to persons outside of the designated outdoor seating area or those not seated at tables. Signage shall be posted that restricts consumption of alcohol outside of the designated outdoor seating area as approved by the Conditional Use Permit.
 - D. Bars are prohibited in outdoor seating areas (with the exception of a service bar for the exclusive use of the establishment's employees).
 - E. Patrons shall only access the outdoor seating area through the interior of the main building and seated by wait staff if at full service restaurants. No other ingress or egress shall be allowed other than required emergency exits.

The Zoning Ordinance requires that the outdoor patio space must be outside the drainage and utility easements. There is a 10' easement to the north and approximately 93' 6" easement to the east. The footings of the pergola and the outdoor patio area must be located outside all drainage and utility easements; however, eaves of the pergola are a permitted encroachment.

The fence that will surround the patio area must be a minimum of 4' tall that has an opacity of at least 50%.

Plans show that patrons will be able to enter the fenced in patio by first going through the restaurants. Customers will be able to access the patio by going through the restaurant and utilizing the northern doors or the two garage doors. There is an emergency exit on the east side of the fence, leading to the existing sidewalk. Customers may not enter from the emergency exit.

Parking

According to section 733 (2) (G) of the Zoning Ordinance, no additional parking will be required for 30 outdoor seats or less. Any additional seating above 30 will require one parking stall per three seats. The diagram they provided on 1/3/25 shows a total of 30 outdoor seats, therefore, no additional parking is needed.

Neighborhood Conditions

North – Greenway Park, RL90- Single Family Residential District, B2-Community Commercial District

South – B2-Community Commercial District, RM-Medium Density Residential District (PUD)

East – B2-Community Commercial District, RH-High Density Residential District

West – RL90- Single Family Residential District, RM-Medium Density Residential District (PUD), RH-High Density Residential District

There are a few businesses in the B-1 and B-2 Zoning District that have outdoor patio areas approved through a conditional use permit. For instance, there is 1319 Woodfire Tavern at 125 E Main St, Local 105 at 105 Main St E, Outlaw Saloon at 103 Main St W, Sugar Rose Bakeshop at 120 Main St W, and Giesenbrau Bier Co. at 1306 1st St NE.

Relatively close to the subject property, Giesenbrau Bier Co. was approved through conditional use permit #C3-2016 (as amended), allowing outdoor seating for dining and drinking. Their outdoor patio is located in the front yard along Main St E/TH 19. A variance was not needed because no accessory structure was being proposed. Giesenbrau Bier Co. has sunshade sails attached to their building and fence, providing shade for their customers, serving a similar purpose as a pergola. In other words, the proposed pergola at 825 1st St SE will not drastically change the look of the neighborhood.



Giesenbrau Bier Co. Patio - Looking North from TH19/Main St – Google Street View

Staff Comments

Utilities General Manager Bruce Reimers, Public Works Director Matt Rynda, Police Chief Tim Applen were solicited for comment, but none were received at the time of this report.

City Engineer Chris Knutson stated on 1/3/25 that there are no stormwater concerns since it's a fairly small area and right next to the pond. He'd like to see how the applicant intends to address grading in the area. There is a steep sidewalk (probably non-compliant) on the east side and the FFE of the building will likely be quite a bit higher than existing ground. As a suggestion, he recommended that the applicant consider connecting the two patio areas with a new walk and constructing new steps leading down to the sidewalk along Main Street. Alternatively, he recommends removing it and connecting it to the existing sidewalk along the parking lot. He is not sure they can get that walk complaint otherwise.

Building Official Comments

Building Official Scott Sasse provided the following email message on 12/13/2024:

In reviewing the proposed outdoor patio at 825 1st SE , I have found that a few things will need to be looked in to. First we will require a report from a current MN licensed structural engineer detailing the addition of the overhead door openings in the northwest corner exterior wall of the building. An HVAC engineering report will be required to confirm if any adjustments will be needed in the HVAC system due to the 2- new large openings in the wall and how that could affect the existing ventilation parameters. The overhead doors will have to adhere to the U-factor/fenestration ratings of the current MN Energy code. Emergency exit out of patio area shall be labeled with “Emergency Exit Only” signage as well as out swinging gate with panic hardware installed according to MSBC 1010.1.10.1. An adjusted seating chart of the existing space maybe required to find an exact occupant load of the

building after the proposed changes. We'll need to confirm if the existing plumbing system is sufficient for the new occupant load.

MnDOT Comments

On 1/3/2025, Angela Piltaver from MnDOT stated that it appears that the plans are outside the MnDOT right-of-way. She is waiting for confirmation from their functional group lead since some sidewalks are located at the back of the MnDOT right-of-way. If it is not in the MnDOT right-of-way, there wouldn't be any comments on the minor encroachment of eaves into that space. Piltaver inquired about the drainage on the site. She wanted to know where it drains...Is there enough runoff storage for the stormwater pond?... Is there sufficient capacity for the increased runoff?

Variance Criteria

(To allow the pergola in the front yard.)

The Zoning Ordinance defines a variance as follows: A modification or variation of the provisions of this Ordinance where it is determined that by reason of unique circumstances relating to a specific lot, that strict application of the Ordinance would cause practical difficulties. Practical difficulties is a legal standard set forth in law that cities must apply when considering applications for variances. To constitute practical difficulties, all three factors of the test must be satisfied, which are reasonableness, uniqueness and essential character. The Zoning Ordinance's criteria addresses these standards.

- A. The variance is in harmony with the general purposes and intent of this Ordinance. (The requested variance is in harmony with the general purposes and intent of this Ordinance because accessory structures is a permitted accessory use in the B-2 Community Commercial Zoning District.)
- B. The variance is consistent with the comprehensive plan. (The requested variance is consistent with the comprehensive plan because a pergola is a permitted accessory use in the B-2 Community Commercial Zoning District.)
- C. The applicant proposes to use the property in a reasonable manner not permitted by this Ordinance, the City Code or the City Subdivision Ordinance. (The applicant will continue to use the property in a reasonable manner in that the variance is needed to allow the accessory structure to be in the front yard of the property, of which the property has two front yards.)
- D. Unique circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape, topography or other circumstances over which the owner of the property since enactment of this Ordinance has had no control. The unique circumstances do not result from the actions of the applicant. (Unique circumstances apply to this property over which the applicant had no control and which do not generally apply to other properties in the same zoning district because the property has two front and two side yards while some other properties in the B-2 District have rear yards.)

- E. The variance does not alter the essential character of the neighborhood. (The variance does not alter the essential character of the neighborhood because surrounding land in the B-1 and B-2 District allow outdoor dining and the outward appearance of the site will not look drastically different from other businesses that have outdoor dining spaces.)
- F. That the variance requested is the minimum variance which would alleviate the practical difficulties. Economic conditions alone do not constitute practical difficulties. (The variance requested is the minimum variance which would alleviate the practical difficulties because it would allow the pergola to be located in the front yard of 825 1st St SE, which does not have any rear yards as opposed to other properties that are not abutting two frontages.)
- G. The Board of Adjustment may impose such conditions upon the premises benefited by a variance as may be necessary to comply with the standards established by this Ordinance, or to reduce or minimize the effect of such variance upon other properties in the neighborhood, and to better carry out the intent of the variance. The condition must be directly related to and must bear a rough proportionality to the impact created by the variance. No variance shall permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permit standards lower than those required by federal, state or local law. (N/A – will be addressed as part of the conditional use permit review.)

Conditional Use Permit Findings

Section 505 of the Zoning Ordinance states that when granting a conditional use permit the City Council shall make the following findings:

- A. The use will not create an excessive burden on existing parks, schools, streets and other public facilities which serve or are proposed to serve the area. (The proposed addition for outdoor seating for eating and drinking services will not create an excessive burden on existing parks, schools, streets and other public facilities which serve or are proposed to serve the area, as the additional areas will accommodate more areas for outdoor seating.)
- B. The use will be sufficiently compatible or separated by distance or screened from adjacent residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land. (The restaurant is adjacent to business uses on its south and east sides, which are zoned in the same B2 Community Commercial Zoning District. The proposed patio will not cause concern to existing residential properties to the south, west, and north as they are separated by roads. Therefore, the patios will blend with the current structure and will be sufficiently compatible with residential homes in the area)
- C. The structure and site shall have an appearance that will not have an adverse effect upon adjacent residential properties. (The proposed building addition and site will have a similar appearance and will blend with existing restaurants, buildings, and sites, the appearance of which have not had an adverse impact on adjacent residential property in the past.)

- D. The use, in the opinion of the City Council, is reasonably related to the overall needs of the City and to the existing land use. (The restaurant use has already been established on the site for over 20 years and no new uses, as defined by the zoning ordinance, will be established as a result of the new outdoor patio for outdoor seating with eating and drinking services.)
- E. The use is consistent with the purposes of the Zoning Ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use. (The use is consistent with the zoning ordinance because restaurants are specifically listed as a permitted use within the B2 Community Commercial Zoning District, and the proposed patio for eating and drinking is a conditional use and conforms to Outdoor Seating Performance Standards identified in the Outdoor Seating for Food Service Businesses and Drinking Establishments set forth in the zoning ordinance.)
- F. The use is not in conflict with the Comprehensive Plan of the City. (The use is not in conflict with the comprehensive plan because restaurants are specifically listed as permitted use within the B2 district while patios for eating and drinking are a conditional use, as well as the land use which the property is guided to in the Comprehensive Plan.)
- G. The use will not cause traffic hazard or congestion. (The proposed building addition will provide 30 additional seats in the outdoor dining area but under Outdoor Seating Performance Standards it states that no additional parking is required for thirty (30) outdoor seats or less. Any additional seating over thirty (30) seats shall provide required parking based on one (1) space per three (3) seats. In this case, no unreasonable traffic hazards or congestion will be created due to the additional seating.)
- H. Adequate utilities, access roads, drainage and necessary facilities have been or will be provided. (Adequate utilities, access roads, drainage and necessary facilities have been provided.)

Staff Recommendation

Staff recommends approval of Variance #V1-2025 to allow the pergola to be in the front yard of the property and Amendment to Conditional Use Permit C8-2004 to allow an outdoor patio area for drinking/dining services in the B-2 Community Commercial District, located at 825 1st St SE, as proposed by JPV Properties, LLC, with the following findings for the Variance:

- A. The requested variance is in harmony with the general purposes and intent of this Ordinance because accessory structures is a permitted accessory use in the B-2 Community Commercial Zoning District.
- B. The requested variance is consistent with the comprehensive plan because a pergola is a permitted accessory use in the B-2 Community Commercial Zoning District.

- C. The applicant will continue to use the property in a reasonable manner in that the variance is needed to allow the accessory structure to be in the front yard of the property, of which the property has two front yards.
- D. Unique circumstances apply to this property over which the applicant had no control and which do not generally apply to other properties in the same zoning district because the property has two front and two side yards while some other properties in the B-2 District have rear yards.
- E. The variance does not alter the essential character of the neighborhood because surrounding land in the B-1 and B-2 District allow outdoor dining and the outward appearance of the site will not look drastically different from other businesses that have outdoor dining spaces.
- F. The variance requested is the minimum variance which would alleviate the practical difficulties because it would allow the pergola to be located in the front yard of 825 1st St SE, which does not have any rear yards as opposed to other properties that are not abutting two frontages.

And making the following findings to approve the Conditional Use permit:

- A. The proposed addition for outdoor seating for eating and drinking services will not create an excessive burden on existing parks, schools, streets and other public facilities which serve or are proposed to serve the area, as the additional areas will accommodate more areas for outdoor seating.
- B. The restaurant is adjacent to business uses on its south and east sides, which are zoned in the same B2 Community Commercial Zoning District. The proposed patio will not cause concern to existing residential properties to the south, west, and north as they are separated by roads. Therefore, the patios will blend with the current structure and will be sufficiently compatible with residential homes in the area.
- C. The proposed building addition and site will have a similar appearance and will blend with existing restaurants, buildings, and sites, the appearance of which have not had an adverse impact on adjacent residential property in the past.
- D. The restaurant use has already been established on the site for over 20 years and no new uses, as defined by the zoning ordinance, will be established as a result of the new outdoor patio for outdoor seating with eating and drinking services.
- E. The use is consistent with the zoning ordinance because restaurants are specifically listed as a permitted use within the B2 Community Commercial Zoning District, and the proposed new patio for eating and drinking is a conditional use and conforms to Outdoor Seating Performance Standards identified in the Outdoor Seating for Food Service Businesses and Drinking Establishments set forth in the zoning ordinance.

- F. The use is not in conflict with the comprehensive plan because restaurants are specifically listed as permitted use within the B2 district while patios for eating and drinking are a conditional use, as well as the land use which the property is guided to in the Comprehensive Plan.

The proposed building addition will provide 30 additional seats in the outdoor dining area but under Outdoor Seating Performance Standards it states that no additional parking is required for thirty (30) outdoor seats or less. Any additional seating over thirty (30) seats shall provide required parking based on one (1) space per three (3) seats. In this case, no unreasonable traffic hazards or congestion will be created due to the additional seating.

- G. Adequate utilities, access roads, drainage and necessary facilities have been provided.

And with the following conditions:

1. All original conditions of the Conditional Use Permit C8-2004 from 2004, 2006, and 2008 will remain.
2. Approval is subject to the site plan dated 1/3/2025 on file with the New Prague Planning Department which complies with the requirements of Section 733 of the Zoning Ordinance.
3. Before the Liquor License can be expanded to the proposed patio area, the following shall be completed:
 - a) All of the requirements and improvements associated with #C8-2004/V1-2025 must be completed and approved by City Staff.
 - b) The City Council must approve the expanded patio area as part of the applicant's liquor license.
4. The fencing around the outdoor patio must be a minimum of 4' tall and have an opacity of at least 50%.
5. Requirements listed by the Building Official must be met as well as any other applicable Building Codes.
6. A grading plan around the proposed new outdoor patio must be reviewed and approved by the City Engineer.
7. The south and east patios may not be utilized for eating/drinking purposes.
8. All recommendations of the New Prague Public Works Department, Utilities Department and MnDOT must be complied with prior to construction and occupation of the patio area.
9. The applicant shall reimburse the city for all fees and costs it incurs for processing, reviewing, and acting on the application approved herein, including but necessarily limited to any fees charged by the city's professional consultants in accordance with established rates.
10. The property shall be subject to all requirements of the New Prague City Code and shall otherwise comply with all other applicable federal, state, and local laws, rules, and regulations.

Attachments

1. Aerial View of Subject Site – Dated 1/3/25
2. Zoomed-In View of Subject Site – Dated 1/3/25
3. Zoning District Map – Dated 1/3/25

JPV Properties LLC – Request to re-open CUP # C8-2004 - Additional outdoor seating for food and drinking services

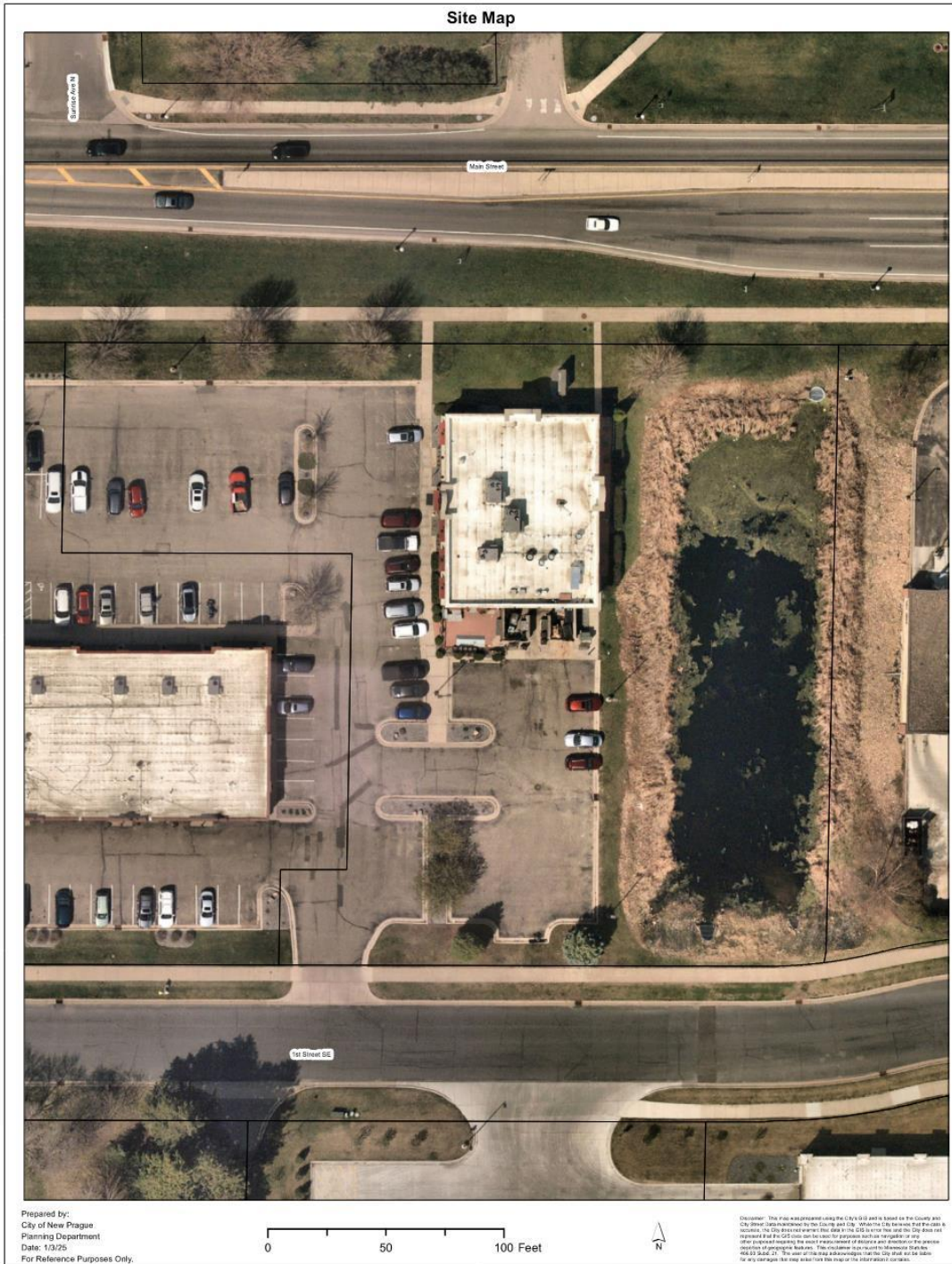
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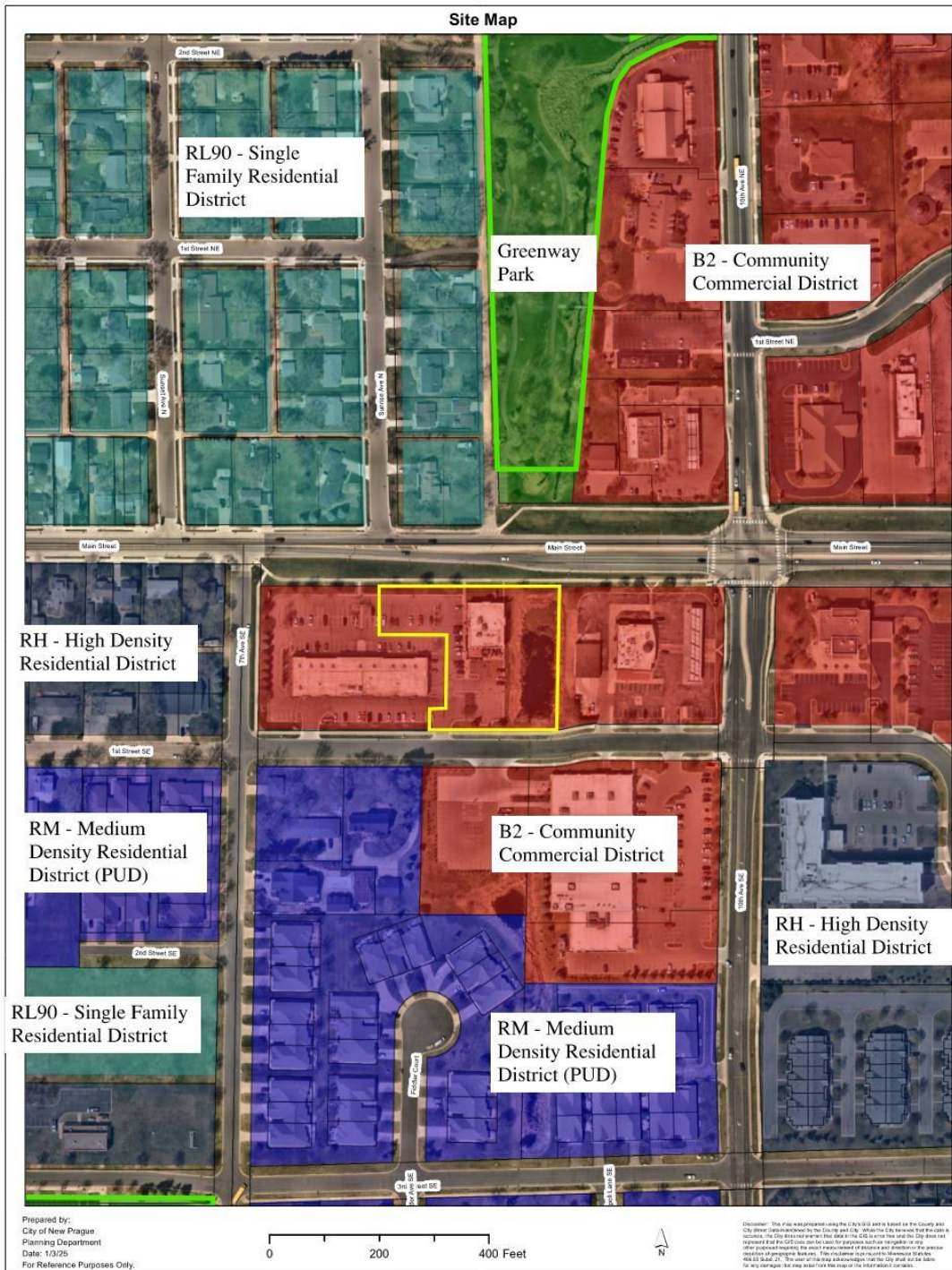
4. Proposed Site Plan – Dated 1/3/25
5. Detailed View of Site Plan – Dated 1/7/25
6. Pictures – Dated 1/7/25



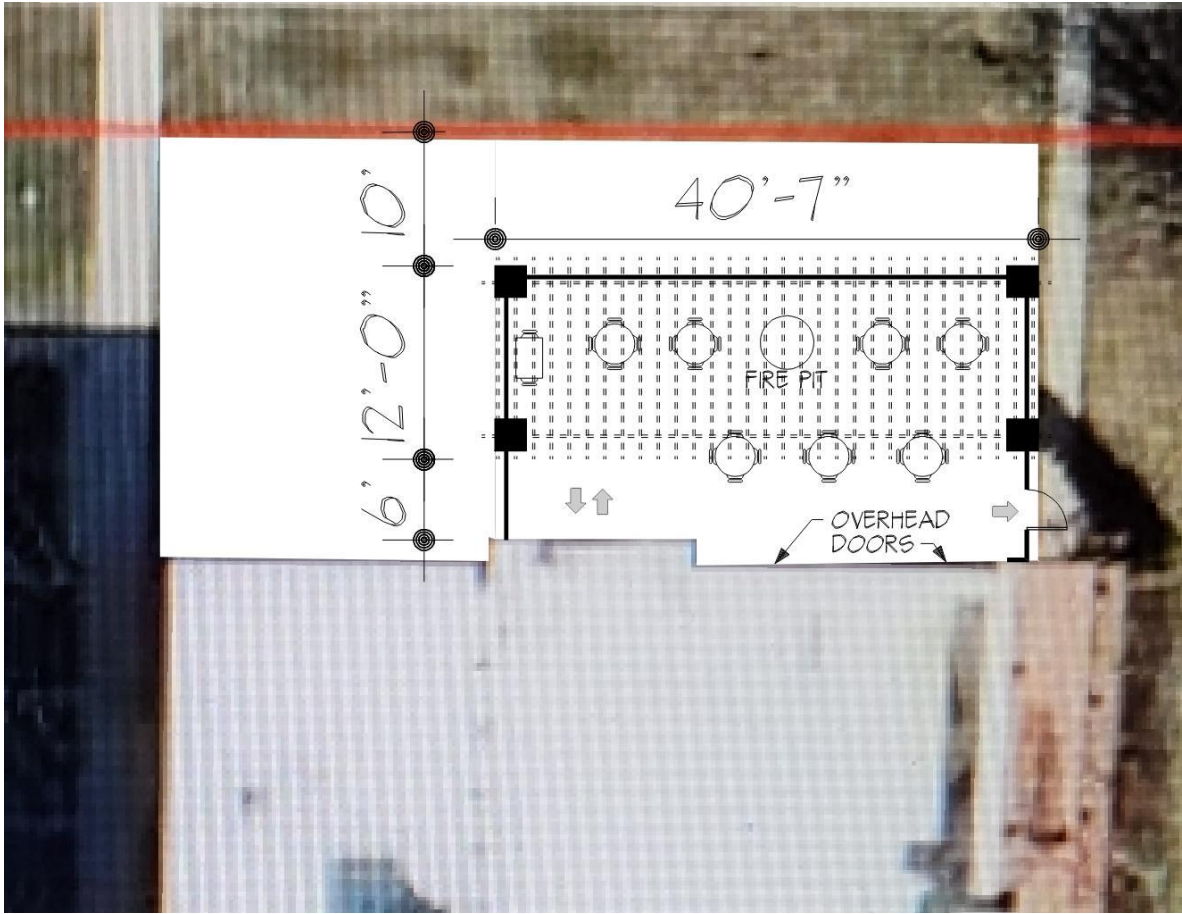
Aerial View of Subject Site



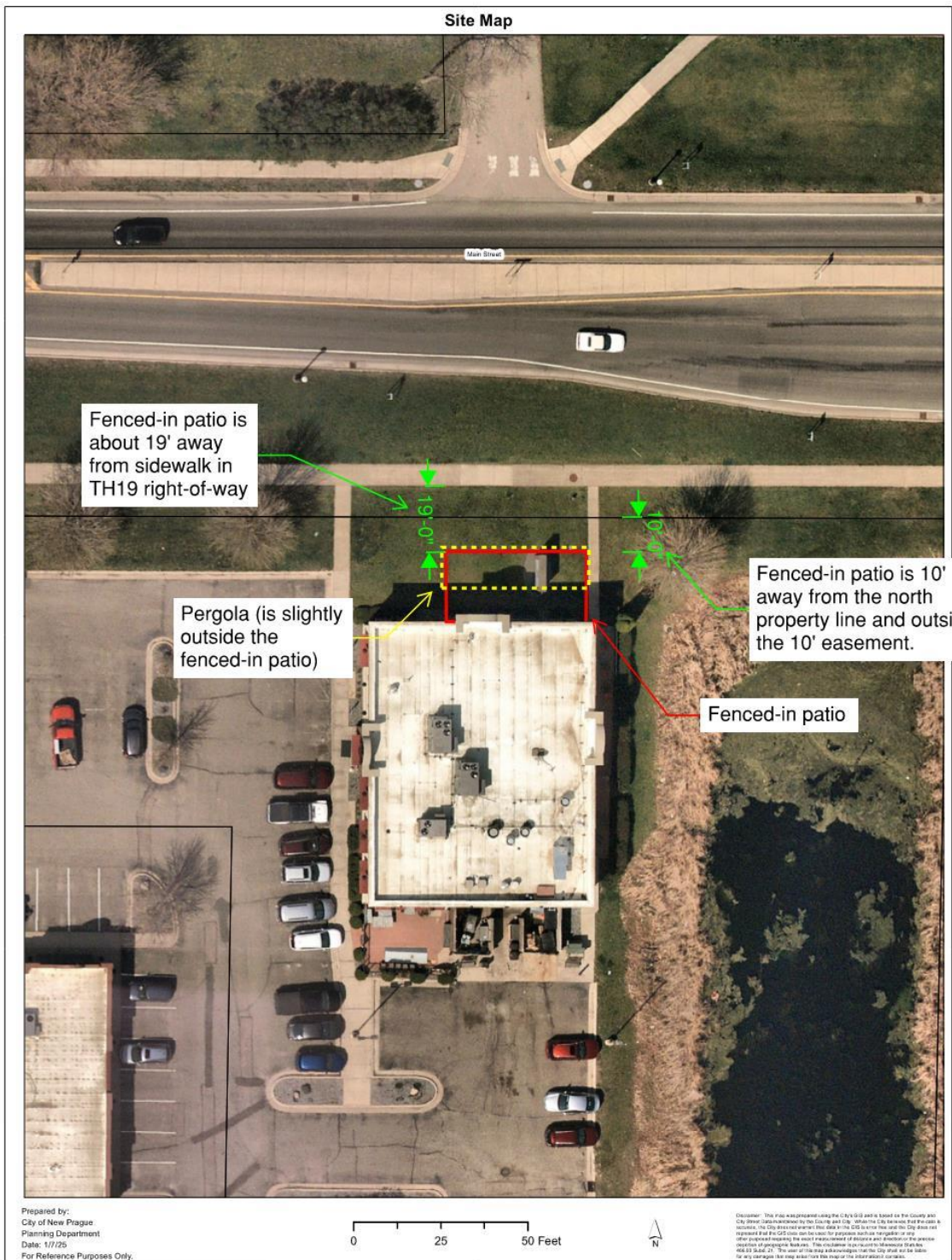
Zoomed-In Aerial View of the Subject Site



Zoning Districts Surrounding the Subject Site



Proposed Site Plan – Looking North



Detailed View of the Site Plan



Looking South from TH19/Main St E



Looking Southwest from TH19/Main St E



Looking West from the Sidewalk on TH19/Main St E



Looking East from the Strip Mall Parking Lot